

### **REMARKS**

After entry of this amendment, claims 32, 43, 45 and 59-66 are pending. Claims 1-31, 33-42, 44 and 46-58 are cancelled. Claims 32, 43, 45 and 59-61 were amended to clarify the antecedent basis inconsistencies presented by the Examiner. Claims 43 and 45 were amended to change the claim dependency. Support for these amendments can be found at page 39, lines 14-15 and original claim 45 respectively. Claim 60 was amended to independent form. Claim 61 was amended to clarify the claimed nucleotide ranges. Support for this amendment can be found at page 19, lines 29-30. Claims 62-66 are new. Claim 62 is supported by original claim 43 and page 39, lines 14-15. Claim 63 is supported by original claim 45. Claim 64 is supported at page 41, lines 26-29. Support can be found for claim 65 in the specification at page 15, lines 12-15. Support for claim 66 can be found in the specification at page 15, lines 12-15, and original claim 32. No new matter is incorporated by these amendments.

### **REJECTIONS UNDER 35 USC §102**

*Claims 30, 32, 43, 45 and 59-61 are rejected under 35 USC 102(e) as allegedly being anticipated by Gao et al. (US 7198951) or under 35 USC 102(a) by Gao et al. (WO03/052052).*

The Applicant respectfully disagrees with the Examiner's basis for this rejection. Gao et al describe a sequence of adenovirus, which is termed "serotype 9". This sequence describes an AAV which was isolated from a rhesus monkey.<sup>1</sup> While this sequence was termed "AAV9" at the time, it was later discovered to be not serologically distinct from previously described AAVs, AAV7 and AAV8, and, thus, has been renamed. So, while the terminology of Gao's "AAV9" corresponds to the AAV9 of the instant invention, the sequences are in fact, significantly structurally and functionally distinct. As can be seen from the table on page 58 and Table 2 of

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<sup>1</sup> See, Gao et al., WO 03/042397, table 1, p. 15 (previously cited by Applicant in an IDS submitted June 23, 2006 as item number 6 of applications commonly owned with instant application); sequence renamed rhesus 1 (rh. 1).

the instant specification, huAAV9 has less than 85% amino acid sequence identity in its capsid as compared to AAV1, 2, 3, 4, 5, 6, 7 and 8, and is serologically distinct.

Figure 1 of the instant specification shows groupings of different AAV sequences into clades, or phylogenetically related superfamilies. Note that rh.1, which is the sequence described in Gao, is clade E with a number of previously known and several previously unknown sequences. AAV9/hu.14 however, is grouped within the AAV9 clade (clade F) with only two other AAVs, both which were unknown as of the filing date of this application.

While the Applicant traverses this rejection, solely in an effort to place the claims in condition for allowance and without prejudice or disclaimer, the Applicant has amended newly independent claim 59 and 60. Thus, the Applicant respectfully submits that this rejection is now moot, and requests that the Examiner withdraw said rejection.

#### DOUBLE PATENTING REJECTION

*Claims 30, 32, 43, 45 and 59-61 are rejected under on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-6 of Gao et al. (US 7198951). The Examiner asserts that although the claims are not identical they are not patentably distinct from each other because the scope of the instant claims is allegedly anticipated by the claims in the issued patent.*

The Applicant respectfully disagrees with the Examiner's basis for this rejection. As indicated above, the Applicant asserts that the sequences claimed in Gao are serologically distinct from the claims of the instant invention. However, solely in an effort to place the claims in condition for allowance and without prejudice or disclaimer, the Applicant has amended independent claims 59 and 60 to exclude any possibility of including the composition of Gao. In light of the amendments, the Applicant respectfully asserts that this rejection is now moot and requests its withdrawal.

REJECTIONS UNDER 35 USC §112, SECOND PARAGRAPH

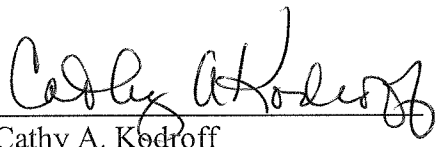
*Claims 30, 32, 43, 45 and 59-61 are rejected under 35 USC 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.*

The Applicant has amended the claims in an effort to cure the inconsistencies cited by the Examiner. In view of the amendments, the Applicant requests that the Examiner withdraw this ground for rejection and allow the claims to pass to allowance.

The Director is hereby authorized to charge any deficiency in any fees due with the filing of this paper, or credit any overpayment in any fees, to our Deposit Account, Number 08-3040.

Respectfully submitted,

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